

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JASON MCCORD PATTEN,)	No. C 11-2057 LHK (PR)
)	
Plaintiff,)	ORDER GRANTING
)	DEFENDANTS' MOTION FOR
v.)	SUMMARY JUDGMENT;
)	DENYING PLAINTIFF'S MOTIONS
DR. C. STONE, et al.,)	FOR SUMMARY JUDGMENT
)	
Defendants.)	(Docket Nos. 159, 161, 175, 178, 192)

Plaintiff, a state prisoner proceeding *pro se*, filed a second amended civil rights complaint ("SAC") pursuant to 42 U.S.C. § 1983 against defendants at San Quentin State Prison ("SQSP"). In his SAC, plaintiff alleges that defendants were deliberately indifferent to his serious dental needs in violation of the Eighth Amendment. Plaintiff has filed two motions for summary judgment. Defendants have filed a consolidated opposition. Defendants have also moved for summary judgment. Plaintiff has filed an opposition to defendants' motion for summary judgment, and defendants have filed a reply.¹ Having carefully considered the papers submitted, the court GRANTS defendants' motion for summary judgment, and DENIES

¹ Defendants' motion for an extension of time to file their reply is GRANTED. Defendants' reply, filed on January 17, 2014, is deemed filed. Plaintiff's request for judicial notice is GRANTED. Defendants' request for judicial notice is GRANTED.

Plaintiff's motion to compel discovery is DENIED. Plaintiff did not comply with the meet and confer requirements of Civil Local Rule 37-1 or Federal Rule of Civil Procedure 37(a) prior to filing his motion.

1 plaintiff's motions for summary judgment for the reasons set forth below.

2 BACKGROUND

3 The following facts are taken in the light most favorable to plaintiff, and are undisputed
4 unless otherwise indicated.

5 Inmates newly committed to the California Department of Corrections and Rehabilitation
6 ("CDCR") are temporarily housed in reception centers until their permanent housing
7 assignments are arranged, and they are transferred to a mainline institution. (Kiani Decl. at ¶ 3.)
8 Under the 2007 Dental Policies and Procedures in effect at the time of the challenged events,
9 within 60 calendar days of a new inmate's arrival at a reception center, a dentist must perform a
10 dental screening on that inmate. (Kushner Decl. at ¶ 5.) At that screening, the inmate shall also
11 receive: (1) a dental priority classification based on priority of dental need; (2) dental health
12 education; and (3) treatment of emergency or Priority 1A dental conditions. (Kushner Decl., Ex.
13 1 at 2.2-1.) While inmates are in reception centers, they are provided limited dental services
14 necessary to meet an inmate's basic needs. (Kiani Decl. at ¶ 3; Kushner Decl., Ex. 1 at 2.2-3.)
15 Services to reception center inmates are limited to those necessary to meet an inmate's basic
16 needs. (*Id.*) Those services include: (1) the treatment of emergency or "Priority 1" urgent care
17 needs such as injuries, acute infection, severe pain, or spontaneous bleeding; (2) treatment for
18 any unusual hard or soft tissue pathology; or (3) individual counseling in oral self-care, if
19 required. (Kiani Decl. at ¶ 3; Kushner Decl., Ex. 1 at 2.2-3(C).)

20 On August 21, 2008, plaintiff was housed in the reception center at SQSP while awaiting
21 transfer to a mainline institution. (SAC at 3.) On August 22, 2008, plaintiff told correctional
22 staff and defendant Dr. Stone that plaintiff had an immediate need for dental treatment because
23 plaintiff had recently been diagnosed with five cavities and had pain.² (*Id.*) Dr. Stone told
24 plaintiff that he would be scheduled for treatment soon. (*Id.*) Under the Dental Policies and
25 Procedures, if an inmate is diagnosed with having tooth decay and has cavities that needed

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27 ² Plaintiff states that this occurred on August 21, 2008. (SAC at 3.) However, defendant
28 doctors' notes record the date as August 22, 2008. This discrepancy is not material to the
outcome of these motions. Based on the recorded notes, the court will use the date of August 22,
2008.

filling, the appropriate DPC³ category is 2. (Kushner Decl. at ¶ 13, Ex. 1 at 5-4-3.) On that day, Dr. Stone categorized plaintiff as “DPC 2.” (Doc. No. 161 at 3-4; Kiani Decl., Ex. A at 4.)

On September 24, 2008, one of plaintiff’s teeth broke on a foreign object in the food. (SAC at 4; Doc. No. 162 (“Pl. Decl.”) at ¶ 4.) Plaintiff told defendant Correctional Officer Upshaw about it, and she merely laughed. (SAC at 4.) Plaintiff insisted that he needed dental attention, and Upshaw responded by taking plaintiff’s bible from him, tearing it into pieces, and throwing it away. (*Id.*) Upshaw would not allow plaintiff to seek dental treatment, and sent plaintiff back to his cell. (*Id.*; Pl. Decl. at ¶ 5.) Plaintiff then filed a request for dental treatment via a health services form (“Form 7362”), but it was ignored. (Pl. Decl. at ¶ 6.) No one has a record of this request.

By October 29, 2008, plaintiff still had not received any response to his request for treatment. (SAC at 4.) Plaintiff submitted a 602 administrative appeal. (Kiani Decl. at ¶ 4; Kushner Decl., Ex. 2.)

On November 20, 2008, Dr. Kiani interviewed plaintiff about his dental concerns. (SAC at 4.) Plaintiff told Dr. Kiani that he was in pain and had broken teeth. (Pl. Decl. at ¶ 8.) Upon examination, Dr. Kiani found no facial swelling, but remarked that plaintiff’s tooth decay needed to be further evaluated. (Kiani Decl. at ¶ 4, Ex. A at 4.) Dr. Kiani told plaintiff to file another request for health services, and plaintiff would be scheduled for treatment soon. (SAC at 4; Kiani Decl. at ¶ 6.) That day, based on Dr. Kiani’s evaluation, Dr. Kiani also assigned plaintiff a category of DPC 2. (Kiani Decl. at ¶ 5.)

On November 26, 2008, plaintiff was called in for a dental appointment. (SAC at 5.) This was a triage appointment to assess and diagnose plaintiff’s main complaint, and to provide emergency treatment if needed. (Kiani Decl. at ¶ 7; Kushner Decl., Ex. 1 at Ch. 5.14-4.)

³ The DPC is a code assigned by a dentist that indicates the degree of urgency of an inmate’s dental needs:

- DPC 1A, 1B, 1C = urgent care
 - DPC 2 = interceptive case (treatment to be initiated within 120 days)
 - DPC 3 = routine rehabilitative care (treatment to be initiated within one year)
- (Kushner Decl. at ¶ 8.)

1 Treatment is not generally performed at a triage appointment unless the patient's status is urgent.
2 (Kiani Decl. at ¶ 7.) Plaintiff received one x-ray and was told to sign some papers. (SAC at 5.)
3 Plaintiff again told Dr. Kiani that he was in pain and had broken teeth. (Pl. Decl. at ¶ 8.) Dr.
4 Kiani did not see any swelling, and the tooth decay appeared to be restorable. (Kiani Decl. at ¶
5 9.) After plaintiff signed the papers, plaintiff was told to return to his cell and that he would be
6 scheduled for treatment "soon." (SAC at 5.) Plaintiff did not receive any other treatment. (*Id.*)
7 On that day, Dr. Kiani changed plaintiff's status from DPC 2 to DPC 1C in order to expedite
8 plaintiff's treatment, even though Dr. Kiani still believed that a DPC 2 status was appropriate.
9 (Kiani Decl. at ¶¶ 9, 11-12.)

10 On December 16, 2008, Dr. Kushner responded to plaintiff's administrative appeal at the
11 second level. (Kushner Decl., Ex. 3.) Specifically, Dr. Kushner partially granted plaintiff's
12 appeal, but informed plaintiff that filing an administrative grievance was not the proper way to
13 request dental treatment. (*Id.* at ¶ 21.)

14 On December 21, 2008, plaintiff broke another tooth. (SAC at 5.) Correctional staff
15 denied plaintiff access to dental treatment, sending him back to his cell. (*Id.*) Plaintiff filed
16 another administrative appeal, and on December 24, 2008, plaintiff was told that his appointment
17 was "soon." (*Id.*) By December 25, 2008, plaintiff was in pain and still had not received any
18 dental treatment. (*Id.*)

19 From August 21, 2008 through April 2, 2009, plaintiff did not receive any dental
20 treatment at SQSP. (SAC at 6.) Thereafter, plaintiff was transferred to a mainline institution
21 where plaintiff was provided a comprehensive exam, x-rays, oral hygiene instruction, plaque
22 index test, and individualized treatment plan. (Pl. Decl., Ex. 1, Ex. A.) Since then, plaintiff has
23 had five teeth treated, and by February 4, 2010, one tooth remained for restoration and a possible
24 upper partial denture. (*Id.*)

25 ANALYSIS

26 A. Standard of Review

27 Summary judgment is proper where the pleadings, discovery and affidavits demonstrate
28 that there is "no genuine issue as to any material fact and that the moving party is entitled to

1 judgment as a matter of law.” Fed. R. Civ. P. 56(c). Material facts are those which may affect
2 the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute
3 as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a
4 verdict for the nonmoving party. *Id.*

5 The party moving for summary judgment bears the initial burden of identifying those
6 portions of the pleadings, discovery and affidavits which demonstrate the absence of a genuine
7 issue of material fact. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323 (1986). Where the moving
8 party will have the burden of proof on an issue at trial, it must affirmatively demonstrate that no
9 reasonable trier of fact could find other than for the moving party. But on an issue for which the
10 opposing party will have the burden of proof at trial, as is the case here, the moving party need
11 only point out “that there is an absence of evidence to support the nonmoving party’s case.” *Id.*
12 at 325.

13 Once the moving party meets its initial burden, the nonmoving party must go beyond the
14 pleadings and, by its own affidavits or discovery, “set forth specific facts showing that there is a
15 genuine issue for trial.” Fed. R. Civ. P. 56(e). The court is only concerned with disputes over
16 material facts and “factual disputes that are irrelevant or unnecessary will not be counted.”
17 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). It is not the task of the court to scour
18 the record in search of a genuine issue of triable fact. *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th
19 Cir. 1996). The nonmoving party has the burden of identifying, with reasonable particularity,
20 the evidence that precludes summary judgment. *Id.* If the nonmoving party fails to make this
21 showing, “the moving party is entitled to judgment as a matter of law.” *Celotex Corp.*, 477 U.S.
22 at 323.

23 At the summary judgment stage, the court must view the evidence in the light most
24 favorable to the nonmoving party: if evidence produced by the moving party conflicts with
25 evidence produced by the nonmoving party, the judge must assume the truth of the evidence set
26 forth by the nonmoving party with respect to that fact. *See Leslie v. Grupo ICA*, 198 F.3d 1152,
27 1158 (9th Cir. 1999).

1 B. Plaintiff's Claim

2 Liberally construed, plaintiff claims that defendants' failure to provide proper and timely
3 dental treatment from August 21, 2008, through April 2, 2009, caused him harm.⁴ Defendants
4 argue that they are entitled to judgment as a matter of law because the evidence is undisputed
5 that plaintiff was provided constitutionally sufficient dental care; defendants did not exhibit
6 deliberate indifference; and defendants are entitled to qualified immunity.

7 Deliberate indifference to serious medical needs violates the Eighth Amendment's
8 proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S. 97, 104
9 (1976); *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds by*
10 *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). Serious
11 medical needs includes dental care. *Hunt v. Dental Dep't*, 865 F.2d 198, 200 (9th Cir. 1989)
12 (dental care important medical need of inmates). A determination of "deliberate indifference"
13 involves an examination of two elements: the seriousness of the prisoner's medical need and the
14 nature of the defendant's response to that need. *See McGuckin*, 974 F.2d at 1059.

15 A prison official is deliberately indifferent if he knows that a prisoner faces a substantial
16 risk of serious harm and disregards that risk by failing to take reasonable steps to abate it.
17 *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only "be aware of
18 facts from which the inference could be drawn that a substantial risk of serious harm exists," but
19 he "must also draw the inference." *Id.* If a prison official should have been aware of the risk,
20 but was not, then the official has not violated the Eighth Amendment, no matter how severe the
21 risk. *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002).

22 Even assuming that plaintiff had a serious dental need, there is no genuine issue of
23 material fact in dispute about whether defendants exhibited deliberate indifference with regard to
24 plaintiff's dental treatment.

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26
27 ⁴ Plaintiff was transferred out of SQSP on April 3, 2009. (SAC at 6.) Although plaintiff
28 argues that SQSP defendants are liable for plaintiff having not received dental treatment, i.e.,
fillings, until July 2009, plaintiff fails to demonstrate how defendants could be liable for
plaintiff's dental treatment after he left SQSP.

1 1. Dr. Stone

2 The record shows that, plaintiff was seen by Dr. Stone one day after plaintiff arrived at
3 SQSP. (SAC at 3; Kiani Decl., Ex. A at 4.) Dr. Stone took x-rays of plaintiff's mouth,
4 conducted a screening test, gave plaintiff a self-care pamphlet, and categorized plaintiff's dental
5 priority as DPC 2. (Kiani Decl., Ex. A at 4.) Despite plaintiff's insistence that plaintiff needed
6 immediate dental treatment because plaintiff had cavities that were causing him pain, plaintiff
7 has not shown anything more than a difference of opinion between his own belief and Dr.
8 Stone's belief that plaintiff's teeth did not need immediate treatment. *See Toguchi v. Chung*, 391
9 F.3d 1051, 1058-60 (9th Cir. 2004).

10 In addition, even assuming that Dr. Stone's assessment was incorrect, even liberally
11 construing plaintiff's claim, there is an absence of evidence that Dr. Stone purposely failed to
12 respond to plaintiff's plight. *See Gamble*, 429 U.S. at 106 ("[A] complaint that a physician has
13 been negligent in diagnosing or treating a medical condition does not state a valid claim of
14 medical mistreatment under the Eighth Amendment. Medical malpractice does not become a
15 constitutional violation merely because the victim is a prisoner."). In addition, plaintiff's
16 involvement with Dr. Stone was limited to this one interaction. At most, this was an isolated
17 occurrence of neglect, which does not set forth a viable deliberate indifference claim. *See Jett v.*
18 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) ("an inadvertent [or negligent] failure to provide
19 adequate medical care alone does not state a claim under § 1983."); *O'Loughlin v. Doe*, 920 F.2d
20 614, 617 (9th Cir. 1990) (repeatedly failing to satisfy requests for aspirins and antacids to
21 alleviate headaches, nausea and pains is not constitutional violation; it may constitute grounds
22 for medical malpractice but does not rise to level of unnecessary and wanton infliction of pain).
23 Finally, plaintiff makes an unsupported assertion that Dr. Stone was responsible for ensuring that
24 plaintiff receive timely treatment based on Dr. Stone's DPC 2 assignment. (Pl. Opp. at 19.)
25 Because this assertion is conclusory and not based on personal knowledge, it cannot generate a
26 genuine issue of material fact sufficient to preclude summary judgment. *See Rodriguez v.*
27 *Airborne Express*, 265 F.3d 890, 902 (9th Cir. 2001). Thus, Dr. Stone is entitled to summary
28 judgment.

1 2. Correctional Officer Upshaw

2 Plaintiff claims that, on September 24, 2008, plaintiff broke one of his teeth. (SAC at 4.)
3 Plaintiff told Upshaw about it and requested dental attention for the pain and damage. (*Id.*)
4 Upshaw responded by laughing at him, throwing away plaintiff's bible, and sending plaintiff
5 back to his cell. (*Id.*) Later that day, plaintiff submitted a Form 7362 request for health services,
6 but it was never addressed. (*Id.*) Upshaw claims that she does not remember any of these
7 events. (Upshaw Decl.)

8 Although plaintiff asserts that Upshaw prevented plaintiff from seeking dental treatment
9 (SAC at 7), plaintiff goes on to admit that he was able to submit and did submit a Form 7362
10 request for health services that very same day. (SAC at 4.) There is no indication that Upshaw
11 interfered with plaintiff's submission of his Form 7362 request for health services, or that
12 Upshaw was responsible for plaintiff not receiving any response after he submitted the request.
13 In sum, there is an absence of evidence that Upshaw was the proximate cause of plaintiff's
14 failure to receive dental treatment. *See Lemire v. California Dep't. of Corrections &*
15 *Rehabilitation*, 726 F.3d 1062 at 1068 (9th Cir. 2013).

16 Moreover, plaintiff has failed to show that Upshaw's actions resulted in harm.
17 *McGuckin*, 974 F.2d at 1060; *Hunt*, 865 F.2d at 200 ("delay in providing a prisoner with dental
18 treatment, standing alone, does not constitute an Eighth Amendment violation"). In addition,
19 plaintiff has offered no evidence to demonstrate that his broken tooth was so severe that a delay
20 in treatment caused him significant harm, and that, at the time, Upshaw knew that plaintiff faced
21 such harm yet disregarded it. *See Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir.
22 2002); *cf. Hunt*, 865 F.2d at 200 (holding that summary judgment was inappropriate where
23 plaintiff alleged that prison officials were aware of his bleeding gums, breaking teeth and
24 inability to eat properly due to the loss of his dentures, yet failed to take any action to relieve his
25 pain or to prescribe soft food diet). Finally, in light of the brief interaction between Upshaw and
26 plaintiff, and the fact that plaintiff was able to submit a Form 7362 request for health services
27 that same day, despite Upshaw's rude behavior, it appears that her action was an isolated
28 occurrence, which is insufficient to find that she was deliberately indifferent. *See McGuckin*,

1 974 F.2d at 1060-61 (comparing an isolated exception to cases in which the facts show that
2 “defendant repeatedly failed to treat an inmate properly or that a single failure was egregious”).
3 Accordingly, there is no genuine dispute of material fact, and Upshaw is entitled to summary
4 judgment.

5 3. Dr. Kiani

6 On November 20, 2008, Dr. Kiani interviewed, evaluated, and diagnosed plaintiff
7 dental’s situation. (Pl. Opp. at 19.) Dr. Kiani determined that plaintiff was still a category DPC
8 2. (*Id.*) Dr. Kiani observed that plaintiff demonstrated no facial swelling, but plaintiff’s tooth
9 decay needed to be further evaluated. (Kiani Decl. at ¶ 4, Ex. A at 4.) Dr. Kiani told plaintiff to
10 file another Form 7362 request for health services, and plaintiff would be scheduled for
11 treatment soon. (SAC at 4; Kiani Decl. at ¶ 6.) After plaintiff submitted such a request, plaintiff
12 was scheduled for a triage dental appointment on November 26, 2008. (Kiani Decl. at ¶ 7.)

13 On November 26, 2008, plaintiff went to his triage appointment and received one x-ray.
14 (SAC at 5.) Plaintiff told Dr. Kiani that he was in pain and had broken teeth. (Pl. Decl. at ¶ 8.)
15 Dr. Kiani did not see any swelling, there was no demonstrable pain upon vertical pressure, and
16 the tooth decay appeared to be restorable. (Kiani Decl. at ¶ 9, Ex. A at 4.) Afterward, plaintiff
17 was told to return to his cell and he would be scheduled for treatment “soon.” (SAC at 5.) Dr.
18 Kiani believed that plaintiff’s condition did not warrant emergency treatment and, because
19 plaintiff’s triage appointment limited treatment to emergency or urgent conditions only, Dr.
20 Kiani did not immediately attend to plaintiff’s needs. (Kiani Decl. at ¶¶ 7-9, 11.) Nonetheless,
21 Dr. Kiani changed plaintiff’s status from DPC 2 to DPC 1C in order to expedite plaintiff’s
22 treatment, even though Dr. Kiani believed that a DPC 2 status was still appropriate. (Kiani Decl.
23 at ¶¶ 9, 11-12.) Though plaintiff disagrees with Dr. Kiani’s reasons for changing plaintiff’s
24 category from DPC 2 to DPC 1C (Pl. Opp. at 21-22), plaintiff’s opinion is based on nothing
25 more than speculation.

26 Plaintiff goes on to say that Dr. Kiani was responsible for expediting plaintiff’s treatment
27 and failed to do so. (*Id.* at 22.) However, Dr. Kiani disputes that he had anything to do with
28 why plaintiff was not treated within the 60 day period designated for a DPC 1C. (Kiani Decl. at

¶ 13.) According to the Dental Policies and Procedures, inmates designated as DPC 2 are to receive treatment within 120 days of triage. (Kushner Decl., Ex. 1 at 5.4-3.) Inmates designated as DPC 1C are to receive treatment within 60 days of triage. (*Id.*)

Plaintiff complains that he was not treated within the time frames assigned by the Dental Policies and Procedures.⁵ Nonetheless, that prison officials violate their own procedures does not automatically equate to a finding that they also violated the federal constitution. The question here is whether there is a genuine issue of material fact that Dr. Kiani's failure to act delayed plaintiff's treatment, and whether that failure to act was deliberately indifferent.

The Dental Policies and Procedures states that at the end of each appointment, the dentist shall ask the inmate if he would like to initiate another request for dental services by filling out a Form 7362 request for health services. (Kushner Decl., Ex. 1 at 5.3-2.) If the inmate so requests, the inmate shall fill out a request form at the end of the dental appointment, and the dentist or designee shall schedule the inmate for the next available appointment depending on the inmate's designated priority categorization, i.e., DPC 1 or DPC 2. (*Id.*) Here, there is no indication that after plaintiff's triage appointment on November 26, 2008, Dr. Kiani asked plaintiff whether plaintiff would like to schedule another appointment by filling out a Form 7362 request for health services. Further, there is no indication that plaintiff filled out a Form 7362 request for health services to schedule an appointment.

According to defendants, an office technician was responsible for scheduling inmates' follow-up dental appointments. (Kushner Decl. at ¶ 19.) In 2008-2009, dental appointments were not scheduled more than three days in advance. (*Id.* at ¶ 23.) If an inmate required further

⁵ Defendants argue that plaintiff was not eligible for treatment of his cavities, and other ailments as a DPC 2, while he was housed at the reception center. (Defs.' MSJ at 10-11.) Defendants base this argument on the Dental Policies and Procedures 2.2(III)(C)(1), which sets forth a non-exhaustive list of the limited dental services necessary and available at the reception center to meet an inmate's basic needs. (Kushner Decl., Ex. 1 at 2.2-3.) However, contrary to defendants' assertion, Dental Policies and Procedures 2.2(III)(C)(1) does not preclude other dental treatments not specifically listed. Further, the Dental Policies and Procedures specifically lays out deadlines as to when treatment for each DPC should occur. (*Id.*, Ex. 1 at 5.4-3.) There is nothing in the record to suggest that those deadlines are inapplicable merely because an inmate is housed at a reception center.

1 treatment, his Form 7362 request for health services was filed with other inmates' forms, and the
 2 office technician would prioritize scheduling the treatments based on the inmate's DPC and
 3 eligibility to receive such treatment. (*Id.*; Kushner Decl., Ex. 1 at 5.3-1, 5.3-2.)

4 Based on the evidence, despite plaintiff's insistence, there is an absence of evidence that
 5 Dr. Kiani was responsible for the delay in scheduling plaintiff's next appointment for treatment.
 6 See *McGuckin v. Smith*, 974 F.2d 1050, 1062 (9th Cir. 1992) (finding that there was an absence
 7 of evidence demonstrating that defendant doctors caused the delay of treatment, noting that
 8 "there is nothing in the record to demonstrate that either was responsible for the scheduling of
 9 such diagnostic examinations or that either in any way hindered its performance"). At most, Dr.
 10 Kiani was negligent in failing to ask if plaintiff would like to schedule another appointment after
 11 November 26, 2008. Negligence is insufficient to establish an Eighth Amendment violation.
 12 See *Toguchi v. Chung*, 391 F.3d 1051, 1060-61 (9th Cir. 2004); see, e.g., *Butler v. Jong Yeoung*
 13 *Moon*, 2011 WL 1103123, *3 (E.D. Cal. 2011) (dismissing claim against doctor for failing to
 14 schedule follow-up appointment because plaintiff failed to show that doctor "deliberately or
 15 callously chose not to schedule a medical appointment for plaintiff knowing that doing so would
 16 expose plaintiff to an excessive risk of harm"); *Marcotte v. Monroe Corrections Complex*, 394 F.
 17 Supp. 2d 1289, 1296 (W.D. Wash. 2005) (disagreement over whether plaintiff or defendant was
 18 responsible for scheduling follow-up medical appointment does not raise factual dispute as to
 19 defendant's state of mind in section 1983 claim for deliberate indifference under Eighth
 20 Amendment). After plaintiff saw Dr. Kiani on November 26, 2008, there is no indication that
 21 Dr. Kiani had any knowledge that plaintiff was in pain or that plaintiff broke any additional
 22 teeth. Importantly, there is an absence of evidence that plaintiff submitted any further request
 23 for health care services to schedule any dental appointments.

24 Based on the evidence in the record, Dr. Kiani is entitled to summary judgment.

25 4. Dr. Kushner and Dr. Walker

26 Plaintiff claims that Dr. Kushner reviewed plaintiff's administrative appeal at the second
 27 level and responded on December 16, 2008. (Kushner Decl., Ex. 3.) At the time plaintiff was
 28 housed at SQSP, Dr. Kushner was the Chief Dentist at SQSP. (*Id.* at ¶ 1.) In the second level

1 appeal response, Dr. Kushner noted that plaintiff was improperly using the administrative appeal
2 process in an attempt to schedule dental appointments, and recognized that plaintiff had, in fact,
3 received a triage appointment with Dr. Kiani on November 26, 2008. (*Id.* at ¶ 21.) No where in
4 plaintiff's administrative appeal did plaintiff complain to Dr. Kushner that he was in pain. (*Id.*,
5 Ex. 2.) Plaintiff does not refute that Dr. Kushner did not personally provide plaintiff dental
6 treatment.

7 Similarly, with respect to Dr. Walker, plaintiff claims that plaintiff submitted his
8 administrative appeal at the director's level of review on November 25, 2008. (Hrvatn Decl.,
9 Ex. 2.) On February 4, 2010, Dr. Walker responded that, as of April 10, 2009, plaintiff had
10 already received treatment to five teeth and there was one tooth remaining for restoration with an
11 upper partial denture to be scheduled for fabrication should plaintiff be eligible for the service.
12 (*Id.*) By the time Dr. Walker completed his investigation, plaintiff had already received
13 treatment at the mainline institution. (*Id.*) There is no evidence that Dr. Walker had any other
14 interaction with plaintiff outside of the response to plaintiff's administrative appeal. Moreover,
15 plaintiff has not submitted any evidence in which Dr. Walker can be inferred to have been
16 deliberately indifferent to plaintiff's dental needs.

17 Supervisors may be liable under section 1983 upon a showing of (1) personal
18 involvement in the constitutional deprivation or (2) a sufficient causal connection between the
19 supervisor's wrongful conduct and the constitutional violation. *Redman v. County of San Diego*,
20 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc) (citation omitted). "A supervisor is only liable for
21 constitutional violations of his subordinates if the supervisor participated in or directed the
22 violations, or knew of the violations and failed to act to prevent them." *Taylor v. List*, 880 F.2d
23 1040, 1045 (9th Cir. 1989).

24 For the reasons discussed above, there is no genuine issue of material fact that Dr. Kiani
25 and Dr. Stone, the subordinates of Dr. Kushner and Dr. Walker, were deliberately indifferent to
26 plaintiff's dental needs. In the absence of any constitutional violation by their subordinates, they
27 cannot be held liable as supervisors. Moreover, there is an absence of evidence that Dr. Kushner
28 and Dr. Walker knew that plaintiff faced a substantial risk of serious harm and disregarded that

1 risk by failing to take reasonable steps to abate it. *Farmer*, 511 U.S. at 837.

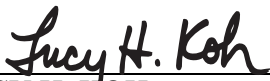
2 Accordingly, Dr. Kushner and Dr. Walker are entitled to summary judgment.

3 **CONCLUSION**

4 Accordingly, defendants' motion for summary judgment is GRANTED.⁶ Plaintiff's
5 motions for summary judgment are DENIED. The clerk shall terminate all pending motions and
6 close the file.

7 IT IS SO ORDERED.

8 DATED: 3/3/14



LUCY H. KOH
United States District Judge

27 _____
28 ⁶ Because the court is granting defendants' motion for summary judgment on the merits,
the court declines discussing defendants' argument that they are also entitled to qualified
immunity.